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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/125,005	07/30/1998	DANIEL CAPUT	IVD-913	7322
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27546	7590	05/26/2006
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PATENT DEPARTMENT-MAIL CODE D-303A  
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BRIDGEWATER, NJ 08807

EXAMINER
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UNGAR, SUSAN NMN

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/125,005

Applicant(s)

CAPUT ET AL.

Examiner

Susan Ungar

Art Unit

1642

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 05 October 2004. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

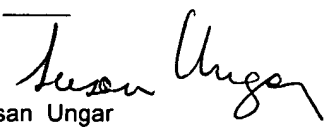
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): All rejections drawn to claims 1, 5 and 40.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1, 5 and 40.  
Claim(s) objected to: none.  
Claim(s) rejected: 3 and 4.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
Susan Ungar  
Primary Examiner  
Art Unit: 1642

Continuation of 11. does NOT place the application in condition for allowance because: Claims 3-4 remain rejected for the reasons previously set forth in the action mailed 4/2/2004, Section 5, pages 1-3.

Applicant argues that numerous specific, substantial and credible utilities are set forth in the specification and reiterates disclosures previously made. The arguments have previously been considered but have not been found persuasive for the reasons of record as claims 3-4 still read on undefined splice variants.

Applicant reiterates arguments drawn to Tominaga et al. The arguments have previously been considered but have not been found persuasive for the reasons of record because claims 3-4 still read on undefined splice variants.

Applicant reiterates arguments drawn to Ikawa et al. The arguments have previously been considered but have not been found persuasive for the reasons of record because claims 3-4 still read on undefined splice variants.

Applicant argues that US Patent No. 6,451,979 provides utility for the claimed invention. The arguments have previously been considered but have not been found persuasive for the reasons of record because claims 3-4 still read on undefined splice variants.

Claims 2-3 remain rejected under 35 USC 112, first paragraph for the reasons previously set forth in the action mailed 4/2/2004, Section 6, page 3.

Applicant argues that the rejection is overcome, essentially for the reasons set forth above. The argument has been considered but is not found persuasive for the reasons set forth above.

Applicant argues that the rejection was overcome by the amendments to claim 1 filed January 30, 2002 wherein the references to additional sequences were deleted. The argument has been considered but has not been found persuasive because claims 3-4 still read on undefined splice variants.

Applicant argues that the rejection is overcome by the amendment to replace the term "comprising" with "consisting essentially of". The argument has been considered but has not been found persuasive because claims 3-4 still read on undefined splice variants.

Claims 3-4 remain rejected for the reasons previously set forth in the action mailed 4/2/2004, Section 7, pages 3-4.

Applicant reiterates arguments drawn to Tominaga. The arguments have been previously considered but not found persuasive for the reasons previously set forth because claims 3-4 still read on undefined splice variants.